

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 616 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

HUSEN HARUN VAGHER

Versus

SHAH TIN PRODUCTS

Appearance:

MR AR SHAIKH for Petitioner
MR RC KAKKAD for Respondent No. 1, 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/06/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. This appeal is preferred against the judgment and order of the Second Joint Civil Judge (Senior Division), Jamnagar whereby, while deciding on the preliminary issue of

jurisdiction, the plaint was ordered to be returned under Order 7 Rule 10 of the Code of Civil Procedure for presentation in the proper Court. Notice for final disposal of this appeal was ordered to be issued and by consent of the parties it is admitted, heard and disposed today by this judgment.

2. The appellant filed a Civil Suit on the facts that, on 27.11.1987, while he was in employment of the defendants, due to defect in the stove in which he was pumping air, an accident had occurred and he had suffered burn injuries due to which permanent partial disability to the extent of 44% was suffered. It is alleged that the accident was attributable to the negligence of the defendants and, on that basis, a claim for compensation quantified at Rs.1,50,000 with interest at the rate of 18% was made in the plaint. The trial Court framed the issues and upon an application of the defendants, ordered to decide the preliminary issue as regards the jurisdiction, in the first instance. Accordingly, after hearing the parties and relying on several judgments, the impugned judgment and order was passed.

3. The only issue arising and agitated in this appeal is whether the Civil Court has jurisdiction to try and hear the case where compensation is claimed for the injury to an employee arising out of an accident which occurred during the course of employment. The trial Court appears to have been carried away by the fact that a special legislation, namely, Workmen's Compensation Act, 1923, specially provides for the rights and remedies for the employees where an accidental injury is caused to an employee during the course of employment. It has also placed reliance on the judgments rendered under the Industrial Disputes Act to come to the conclusion that the jurisdiction of Civil Court was barred in such cases.

4. It is not necessary to enter into details of the rival contentions in view of the fact that the main issue arising in this case is squarely covered by the two judgments of this Court. It is held in UNION OF INDIA v. GOPALDAS VARANDMAL [1996 GLR 76] that sub-sections (1) and (5) of Section 3 of the Workmen's Compensation Act, 1923 does not deal with and bar a civil suit for compensation for an injury caused by personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible. It is clearly held that the legislative intent appears to be that an injury caused as a result of the personal negligence or wilful act of the employer or of some person for whose act or default the employer is

responsible will not be covered up within the meaning of sub-section (5) of Section 3 of the Workmen's Compensation Act and will not operate as a bar to the institution of a civil suit. In the other judgment of a Division Bench of this Court, namely, JASUBEN D. PARMAR v. G.E.B. [1991 LAB. I.C. 479], it is further observed as under:

"A bare look at the provisions of sub-section (5)

of Section 3 of the Workmen's Compensation Act, makes it apparent that suit for damages will not be maintainable by a workman in any Court in respect of an injury, if he has instituted a claim to compensation in respect of the injury before a Commissioner under the provisions of Workmen's Compensation Act 1923. It is true that the appellant had deposited a sum of Rs.31,000/- with the Commissioner, Workmen's Compensation Act, 1923 and the said amount was withdrawn by the appellants during the pendency of the appeal. However, deposit of the amount by the respondents with Commissioner or withdrawal of the said amount by the appellants cannot be interpreted to mean as institution of a claim to compensation by the appellants in respect of the injuries sustained by the deceased before a Commissioner under the provisions of the Workmen's Compensation Act, 1923 so as to bar suit for damages in Civil Court. Where death gives rise to a claim for compensation under the common law as well as Workmen's Compensation Act, the party entitled to compensation can claim compensation under either of the laws but not under both. The words "may claim" make it clear that the option is left to the person entitled to compensation to choose whether he would seek the remedy available under the common law or the workmen's Compensation Act. It is, therefore, obvious that if he has exercised his option and has chosen one of the two remedies available to him, he would be entitled to compensation under the chosen remedy only."

It is concluded in the said judgment that the contention that the Civil Court had no jurisdiction to try the suit could not be accepted. In the facts of the present case also, it is not the case that the appellant had instituted any proceedings under the Workmen's Compensation Act and hence it cannot be held that the remedy under the civil law was barred if the claim was based on the alleged negligence of the employer. In view

of the settled legal position, it is not necessary to refer to the other judgments cited on behalf of the appellant.

5. In the result, the appeal is allowed and the impugned judgment and order is quashed. The trial Court should proceed with the Special Civil Suit No.42 of 1991 in accordance with law. No order as to costs.

(KMG Thilake)

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